

Morrison County Board of Adjustment Via Webex

Minutes

June 2, 2020

Chairperson BethyJo Murphy called the meeting of the Morrison County Board of Adjustment to order at 5:30 p.m.

Members Present: BethyJo Murphy, Dave Stish, Russ Nygren, and Marvin Trettel.

Members Absent: None

Ex-Officio Members Present: Amy Kowalzek, Brian Middendorf, Scott Anderson and Sharon Peterson

Ex-Officio Members Absent: None

- 1. Kevin & Felicia Busch – 3945 320<sup>th</sup> St; Cushing, MN 56443 – Application for a Variance to place a home within the setback to a bluff; located in pt of Gov. Lot 1, Section 28, Township 132, Range 31, Scandia Valley Township.**

Kevin & Felicia Busch were present.

Amy Kowalzek entered into record Sections 706.1 B and 706.1 E of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, overview from the applicant. variance application, background information questions, two surveys with site plans, two aerial photos, two lake view photos, four site photos, staff report, two aerial photos showing the location of the existing home, survey with proposed house location, letter from the DNR, aerial photo showing the radius of the bluff impact zone, survey showing top of bluff and proposed dwelling location, survey showing the property without the bluff, DNR sonar language, aerial photo, aerial photo showing the topography and three soils maps. There were 141 notices were sent to neighboring property owners. Two comments were received prior to the hearing. Amy entered the finding of fact and decision questions.

Felicia and Kevin Busch read statements regarding their property.

Bethy Jo Murphy stated that in the statement you gave you stated the encroachment would be 8' at one point and 7' at another point. My understanding is that it is 8'. How many trees would need to be removed with the new proposal? Kevin Busch stated they have removed 8 trees already and we do not expect to remove anymore. It could be 7 feet if home was at an angle. Bethy Jo stated that it was mentioned that the engineer letters were not read, I just wanted to make a note that the Board did receive those letters in their packets.

Russ Nygren asked why the neighbors needed to share a driveway. The neighbors do own the neighboring parcel with a driveway. Kevin Busch stated that the neighbors have used this driveway for several years. Russ stated that it is our responsibility to protect the bluff & bluff impact zones. The property owner has chosen the home design and the use of solar. Kevin stated that solar is very environmentally friendly. There is no other place to build without impact to the trees or the neighbors.

Felicia Busch stated they are looking at the future climate change with the solar.

Marvin Trettel asked if the home is in the same place as the old structure. Kevin Busch stated the old cabin was partially within the setback. The new home has more of a length. Felicia Busch stated that they tore down the old cabin because they thought we could build the new cabin.

Dave Stish asked if a variance is issued does it create a non-conformity. Bethy Jo Murphy stated that her understanding is the if a variance is granted any future expansion to the structure would also require a setback. Amy Kowalzek stated that is correct. Dave Stish stated that the ordinance states the gradual elimination of non-conformities. Dave Stish asked what the length and width of the new home would be. Kevin Busch stated 62' x 24' and 29'. The variance is a waiver of the rules. Dave stated to rotate the home would get the setback met. You could have also repaired or replaced the structure you had. It is stated you are 85' back from the lake, the drawing says its 75' setback from the lake. Kevin Busch stated the house is 85' back and the deck is 75' back. There is no basement in the house it will be a slab on grade. Dave Stish asked about moving the structure over 5 to 10 feet. Kevin Busch stated that there would be no difference between excavating within the bluff or bluff impact zone. We do not want to rotate the house due to the driveway and the closeness to the neighbors.

Bethy Jo stated that in the comments it was mentioned that not getting the variance would be violating your constitutional rights. Having a home on your property is a reasonable use of the property.

Marvin Trettel stated that a suggestion that was mentioned earlier to move the cabin and using the area of where the old wall was, would somewhat be better to except than this proposal. Would you consider this. Kevin Busch stated it feels like we are being backed into a corner of our property. It seems like we are being forced into not having solar.

Audience Comment:

Shannon Wettstein – SWCD – stated reviewing this application feel like it is affecting the bluff impact zone. There is another place for the home on this parcel which would meet setbacks. Water plan is to protect the lakes. Meeting setbacks with structures would help to do that. The property has very sandy soils. Excavation would allow these types of soils to slough.

Glen Welters – stated he lives on a bluff and followed all the guidelines. There are personal desires in this situation.

Mark Anderson – DNR – stated the applicants can meet all setback requirements. Their request is based on personal need. The building envelope allows for this size home they are requesting. The e-mail I submitted laid out the position of the DNR and this application should not be approved.

Al Rausch – stated our opinion is personal. If this is not granted and the home would need to move closer this would impact our privacy and the property would diminish significantly. We do own another parcel but want to keep them septate. If I need to put in a new driveway I would have to go over my system system.

Josh Stumpf – stated he does think that using renewable resources is a great idea. Appreciate the tall pines in the area. Wish them the best.

Public Comment was closed.

Russ Nygren stated the deck seems to be within the setback. Kevin Busch stated the deck is within the 75' setback. Russ asked Mr. Anderson if solar is a practical difficulty. Scott Anderson stated inadequate access to sunlight anywhere on the property could be a practical difficulty.

BethyJo Murphy asked if there is a legal recorded easement for the driveway. Kevin Busch stated it is not legally recorded. But do not think we can get out of them using it since it has been used for so long. Scott Anderson stated there is adverse possession but do not think it would apply here since this was an agreement for them to use the driveway.

Kevin Busch stated they would not want to put the lake in any danger in anyway. Licensed engineer to help protect the lake and the bluff. Felicia Busch stated that the Board should listen to the specialists not the non-specialists.

Bethy Jo Murphy and Marvin Trettel stated they did complete a site visit on their own. Russ Nygren and Dave Stish stated they had visited the site in November for the first hearing.

Bethy Jo Murphy asked if Mr. Anderson could speak to the expert vs non-expert comment. Scott Anderson stated that the you can listen to the expert if you believe this is correct. You can listen to all the people that have spoken.

The voting sheets were polled.

A motion was made by Russ Nygren to deny the Variance request. The motion was seconded by Dave Stish. The vote was all in favor.

**2. Brian & Kristine Flanagan – 2052 Fish Trap Lake Dr; Cushing, MN 56443 – Application for a Variance to add onto a non-conforming structure; located on Lot 5 of Lake Shore Acres, Section 32, Township 132, Range 31, Scandia Valley Township.**

Brian & Kristine Flanagan were present.

Amy Kowalzek entered into record Sections 301, 301.6A, 706.1, 706.1A and 706.3 of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, variance application, background information questions, lot dimensions map, survey, four aerial photos, six site plans, three aerial photos, staff report, impervious surface calculation, aerial photo showing contours and aerial photo showing building envelope. There were 80 notices were sent to neighboring property owners. No comments were received prior to the hearing. Amy entered the finding of fact and decision questions.

Brian Flanagan stated that the staff report sums up the request. This addition is only to improve the cabin not to expand it.

Russ Nygren stated if you were to move back would this put you in the lower spot of the property that gathers water. Brain Flanagan stated it could.

Dave Stish asked if the deck on the lake side tied to the neighboring property. It appears the block needs some repair will this all get completed at the same time as the re-construction. Brian Flanagan stated it would. We will be removing and replacing, and the neighbors are very supportive on this. The neighbor to the west is my brother Steve.

Bethy Jo Murphy stated she noticed some erosion on the property is there any plans to improve this when all the other work is being done. While you are fixing the block could the structure just be moved back. Brian Flanagan stated they are going to add rip rap. Last year the lake was the highest it has ever been. There is a concrete wall foundation on the big part of the cabin. The small addition is where the block foundation is and needs repair. Bethy Jo asked if there is a plan to fill in the basement. Brian stated they are trying to figure out the best way to do this, we only get water in it when the lake is high. It is more like a crawl space.

Dave Stish asked if it is possible to remove things within the shore impact zone. Brain Flanagan stated that the deck would impact the neighbor as well. Dave asked if the front deck could be removed. Brian stated that he did not think about doing this. Dave stated this would be better. This is a small non-conforming lot and sometimes we need to limit the density and impervious surface.

Russ Nygren asked if the little structure is for the well. Brian Flanagan stated it is. Russ asked if they would be moving the well. Brian stated we could move the well, but we would like to keep the structure. Russ stated he is not in favor of that. Bethy Jo Murphy stated that the well does not impact the shore impact zone the structure does. Brian asked what size deck would be acceptable for the Board. Amy Kowalzek stated that 32 square feet is considered a landing and does not need a variance. Brian asked if they removed the front deck could they leave the other part. Dave Stish stated he would like to see bigger changes.

Russ Nygren stated he would like to see changes to justify the variance. Brian Flanagan stated most of the deck is on the neighboring property, since he is not asking for a variance can he leave his portion up. Amy Kowalzek state the Board cannot condition a neighbor.

Audience Comment:

Steve Flanagan – stated he is in favor of the request. This is not close to the lake. The pump house is a unique structure and they use the deck to go between homes.

Russ Nygren stated this has very little change to the impervious surface. Dave Stish asked what the practical difficulty is. Brian Flanagan stated we would be willing to remove the well house.

BethyJo Murphy asked if the Shoreland Specialist has been to the site. Brian Flanagan stated not yet but would be willing to reach out and have the property looked at.

Bethy Jo Murphy and Marvin Trettel stated they did complete a site visit on their own. Russ Nygren and Dave Stish stated did not complete a site visit.

The voting sheets were polled.

A motion was made by Dave Stish to deny the Variance request. The motion was seconded by Bethy Jo Murphy. There was not action taken.

**3. Mike Donovan/Keith & Lisa Lorensen – 34039 East Bay Lane; Motley, MN 56466 –Application for a Variance to allow impervious surface within the shore impact zone; located in Lot 3 Block 1 of Cattleberry Pines, Section 10, Township 132, Range 31, Scandia Valley Township.**

Keith & Lisa Lorensen were present.

Amy Kowalzek entered into record Sections 706.1 and 706.1A of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, variance application, background information questions, three site plans, two aerial photos, lake view photo, staff report and aerial photo showing contour lines. There were 68 notices were sent to neighboring property owners. One comment was received prior to the hearing. Amy entered the finding of fact and decision questions.

Lisa Lorensen stated this was not to make enemies with our neighbors. Just trying to get a little more room down by the lake to keep an eye on the kids in the water.

Russ Nygren asked why a 6' x 8' landing when a 4' x 8' landing is allowed. Lisa Lorensen stated there is no landing at the top of the drawing. This area is somewhat suspended in the air.

Dave Stish stated its commended that everything on your property is compliant now. Why would you want to make something non-conforming on the property? Only asking for 16 additional square feet.

BethyJo Murphy stated it is a steep slope and heavily vegetated. Is the property within the DNR regulations with the dock. Could you add to that for additional room?

Lisa Lorensen stated that at this time we do not want to upset any of our neighbors. Kevin Lorensen stated they did add some to the dock after this process was started. This is a steep slope and we were just looking to make this a little safer and a little more room.

Marvin Trettel stated that a 4' x 8' area should be enough room.

Lisa Lorensen asked if a bench was added to the outside of the landing would this be allowed. Amy Kowalzek stated she would need to see the proposal.

Lisa Lorensen stated they would like to withdraw their application at this time. Amy Kowalzek stated you would need to come in and apply for your permits before getting started.

Bethy Jo Murphy and Marvin Trettel did complete a site visit on their own. No other board members visited the site.

**4. Joshua & Laura Stumpf – 2059 Birchcrest Dr; Motley, MN 56446 – Application for a Variance to construct a deck within the shore impact zone and within the setback to the lake; located in Lot 15 of the 9<sup>th</sup> Addn. to Shamineau Park, Section 17, Township 132, Range 31, Scandia Valley Township.**

Josh Stumpf was present.

Amy Kowalzek entered into record Sections 706.1 and 706.1A of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, variance application, background information questions, site plan, three site photos, three site plan photos, two aerial photos, lake view photo, staff report and impervious surface calculation sheet. There were 183 notices were sent to neighboring property owners. One comment was received prior to the hearing. Amy entered the finding of fact and decision questions.

Josh Stumpf stated the impervious surface will be a little less. A shed was removed by the previous owner.

Russ Nygren asked if all the decks will be replaced. Josh Stumpf stated it will be one continuous deck. Russ asked if it would be possibly to make the deck on the lakeside smaller. Josh stated they choose this route because of handicap accessible. The slope on the road area to the cabin is steep and could cause safety issues. Russ stated the road side is understandable, but the lake side could be reduced.

Dave Stish what is allowed on the road side without a variance. Amy Kowalzek stated you can have a deck as long as it is 75' back and out of the right of way. Dave stated the property was bought in 2019 and is a non-conforming lot with many restrictions. When did your family members become handicapped? Josh stated that the family has handicapped issued and will continue to get worse. This is a property that would fit into my budget. Josh was also unaware that the decks that are on the property now did not get permits.

Marvin Trettel stated his wife is in a wheelchair as well and this takes a lot of room to maneuver in. Being so close to the water creates a problem. Josh Stumpf stated there is another door, but we cannot use this as an access door due to the construction.

Bethy Jo Murphy stated there is two side doors to the home. Why weren't other options considered for the deck. This structure is close to the lake. Could the walkway be built over the deck? Josh Stumpf stated that the septic is in the way and cannot use this area for vehicles it is too steep, and the area is soft.

Audience Comment: None

Bethy Jo Murphy and Marvin Trettel stated they did complete a site visit on their own. No other board members visited the site.

The voting sheets were polled.

A motion was made by Marvin Trettel to deny the Variance request. The motion was seconded by Dave Stish. The vote was all in favor.

**5. Steven Dahlke – 12566 Sage Rd; Hillman, MN 56338 – Application for a Variance to construct a home within the setback to a Tier I feedlot; located in pt. of the NW ¼ of SW ¼, Section 21, Township 40, Range 28, Mt. Morris Township.**

Steve Dahlke & Teri Vogt were present.

Amy Kowalzek entered into record Section 1208.1 of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, variance application, background information questions, site plan, two aerial photos, staff report, two aerial photo showing distance to feedlot aerial photo showing wetlands. There were 11 notices were sent to neighboring property owners. No comments were received prior to the hearing. Amy entered the finding of fact and decision questions.

Steve Dahlke stated that placing the structure 660 feet back would put the structure in a very wet area.

Russ Nygren asked why this area was chosen to place the home when the feedlot was already there. Steve Dahlke stated this was part of the family farm and I would not have to have such a long driveway.

Dave Stish stated there is a holding tank there now. Will there be a drainfield added? Steve Dahlke stated the drainfield will be added. Needed to meet the setbacks to the wetlands. Dave asked if there is a second site for a septic. Steve stated there is enough room for two systems if its in the high ground. Dave stated that the feedlot setback is reciprocal. The neighbor would need a variance to go to a bigger farm if the variance is approved. Would you be opposed to that? Steve stated he did not think so. He has talked to the neighbor and he was going to give up his feedlot status, but I did not think that was a good idea. Dave asked if there is room to expand the feedlot. Steve stated he was not sure.

Marvin Trettel asked if when the property was purchased where you aware of the feedlot setback. Steve Dahlke stated he thought the setback was to the well.

Bethy Jo Murphy asked if there is a well on site. Steve Dahlke stated there is. Bethy Jo stated this is an agriculture area and in this area, we would focus on agriculture uses. There is a shed across the road that could be used for feedlot reasons. It seems like last year was the first time the property was so wet? Why the interest in an area that is wet? Steve Dahlke stated he did not want to put the house a mile off the road. Have 80 acres in a forest program and need to be close. The shed across the road is not in good shape. Can not tell if it could be used in the future.

Audience Comment: None

Bethy Jo Murphy stated she did complete a site visit on her own. No other board members visited the site.

The voting sheets were polled.

A motion was made by Russ Nygren to deny the Variance request. The motion was seconded by Bethy Jo Murphy. The vote was all in favor.

With no further business at hand, the hearing was closed at 12:15 a.m.

A motion was made by Dave Stish to approve the May 5, 2020 minutes. The motion was seconded by Marvin Trettel. The vote was all in favor.

New business – None

Old business – None

A motion was made by Dave Stish to adjourn the meeting. The motion was seconded by Bethy Jo Murphy. The vote was all in favor.

With no further business at hand, the hearing was closed at 12:17 p.m.

Respectfully submitted,

Amy Kowalzek, Secretary

Morrison County Board of Adjustment

BethyJo Murphy, Chairperson  
Morrison County Board of Adjustment

Dave Stish, Vice-Chairperson  
Morrison County Board of Adjustment